FILED
JUN 2 6 2008
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY [illegible] DEPUTY

Darrow D. HAYGOOD V09189
C.S.P Sac IV New Folsom
P.O. Box 290066
Represa, Ca 95671
IN pro se

United States District Court
Southern District OF California

D. HAYGOOD,
Petitioner,
V.
JAMES WALKER, WARDEN,
Respondent.

case No. 08CV0374-JAH (BLM)

"Objections to Report and Recommendation"

On April, 2008, petitioner Darrow Haygood, a state prisoner, appearing pro se and in Forma pauperis, Filed the First Amended petition For writ OF Habeas Corpus ("FAP") currently Before the court. Doc. No. 4. In it's April 10, 2008 Notice Regarding possible Dismissal OF petition For Failure to Exhaust state court Remedies (option order), This court inFormed petitioner that he had Failed to Allege exhaustion as to claims 1, 2, 4 and 6 OF the First Amended petition. Petitioner produces proof OF the Exhaustion OF state court Remedies as to claim's 1, and 2 as well as 4, and 6, starting with superior court, case No; in reFerence to 1 and 2 here is super. ct. No. SCE229595 Also in Regard's to 4 and 6, super. ct. No; SCE229595. Appellate court case Number, D049464, Also in Regard's to 4, and 6, Appellate court case number, D043134. And Supreme Court case number, S155796 and S136036.

X D. Haygood V09189
In pro se
June 25, 2008

OK PER COURT

on september 28, 2005 I petitioner was Denied By The supreme court on ground's 4, and 6 and was advised That From the Exact Date of my Denial which is sept 28, 05, To september 28, 2006 would Be an exact year in which my petition should Be already in the court's so my statutes of limitation's For one year would not Expire. With in that time petitioner was correctly composing his Habeas corpus properly so their wouldn't Be any complications. On July of 2006 which is two month's Before september 28, 2006 Dead Line petitioner Filed a petition Back Down to the superior court (Habeas Corpus) which is claim 1 and 2, one Being InEFFective Assistance of Trial counsel in Failing to OBJect to the admissibility of the Tape-Recorded Interview of petitioner when Detective Mercado who informed petitioner that he was Under Arrest Did not Read miranda rights. And two, InEFFective Assistance of trial counsel in Failing to pursue Any investigation into whether petitioner had Been read his miranda right's By Detective Mercado at any time prior to petitioner making statement's. These two claims was Brought Down to the superior court on writ of Habeas corpus Base on InEFFective Assistant of Appellant counsel in Failing to raise the ground's on Direct Appeal. Here petitioner presents proof of Exhaustion of his State Remedies. The statute of limitations Does not run while a properly Filed state habeas corpus petition is pending. See NiNo v. Galaza, 183 F.3d 1003, 1006 (9th Cir. 1999) But see Artuz v. Bennett, 531 U.S. 4, 8 (2000).

Petitioner here By OBJect's to Report and Recommendation.

X D. Haygood V09189
In pro se

June 25, 2008

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

D. HAYGOOD,

Petitioner,

v.

JAMES WALKER, Warden,

Respondent.

Civil No. 08cv0374 JAH (BLM)

ORDER GRANTING APPLICATION TO PROCEED IN FORMA PAUPERIS

Petitioner, a state prisoner proceeding pro se, has submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma pauperis. Petitioner has $-1.16 on account at the California correctional institution in which he is presently confined. Petitioner cannot afford the $5.00 filing fee. Thus, the Court **GRANTS** Petitioner's application to proceed in forma pauperis, and al lows Petitioner to prosecute the above-referenced action as a poor person without being required to prepay fees or costs and without being required to post security. The Clerk of the Court shall file the Petition for Writ of Habeas Corpus without prepayment of the filing fee.

IT IS SO ORDERED.

DATED: April 7, 2008

JOHN A. HOUSTON
United States District Judge

EXHIBIT COVER PAGE

A

EXHIBIT

Description of this Exhibit: Exhausted Proof of Claims 1,2,4 and 6 Denial's.

Number of pages to this Exhibit: 5 pages.

JURISDICTION: (Check only one)

- [ ] Municipal Court
- [ ] Superior Court
- [ ] Applellate Court
- [ ] State Supreme Court
- [x] United States District Court
- [ ] State Circuit Court
- [ ] United States Supreme Court
- [ ] Grand Jury

Exhibit-A
For Exhausted claim 1 and 2

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED
Stephen M. Kelly, Clerk
JAN 22 2007
Court of Appeal Fourth District

In re DARROW DEWANN HAYGOOD on Habeas Corpus.	D049464 (San Diego County Super. Ct. No. SCE229595)

THE COURT:

The petition for writ of habeas corpus has been read and considered by Justices Benke, Aaron, and Irion.

A jury convicted petitioner Darrow Dewann Haygood of two counts of residential robbery in concert. (Pen. Code,[1] §§ 211, 213, subd. (a)(1)(A).) The jury also found true a firearm use enhancement (§ 12022.53, subd. (b)) and a gang enhancement (§ 186.22, subd. (b)(1)). The trial court sentenced Haygood to 26 years in prison.

Haygood appealed the trial court's judgment.[2] Among the arguments raised in his appeal, Haygood claimed his trial counsel rendered ineffective assistance by failing to object to the lack of foundation for the gang expert's opinion and by failing to object to the admission of certain statements made by the investigating officer during a taped interview with Haygood. In reviewing this latter issue, we specifically noted that Haygood had been read his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 before talking with the investigating officer. After finding only harmless instructional error, we affirmed the trial court's judgment. (*People v. Haygood* (Jun. 22, 2004, D043134) [nonpub. opn.].)

1 All statutory references are to the Penal Code unless otherwise specified.

2 We take judicial notice of the record on appeal.

In this petition, Haygood claims that his trial counsel rendered ineffective assistance of counsel by failing to investigate and object to the admission of any portion of the taped interview because Haygood had not been read his *Miranda* rights prior to the interview. Haygood further claims that his appellate counsel rendered ineffective assistance by failing to assert this aspect of trial counsel's ineffectiveness on appeal.

We conclude that Haygood has failed to state a prima facie case for relief. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) As indicated above, this court specifically noted in its decision on appeal that Haygood had been read his *Miranda* rights prior to being interviewed by the investigating officer. This fact is substantiated by the trial testimony of the investigating officer, who was specifically asked whether he had advised Haygood of his *Miranda* rights and about the details of the advisement. Moreover, after the investigating officer's testimony, Haygood testified at length about the interview and never once indicated or even suggested he had not been properly advised of his *Miranda* rights beforehand. Although Haygood submitted a declaration with this petition stating he was never read his *Miranda* rights, a defendant's self-serving declaration is not sufficient to state a prima facie case for relief. (See, e.g., *In re Alvernaz* (1992) 2 Cal.4th 924, 938.)

The petition is denied.

IRION, Acting P. J.

Copies to: All parties

S155796

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re DARROW HAYGOOD on Habeas Corpus

The petition for writ of habeas corpus is denied.

SUPREME COURT
FILED
FEB 1 3 2008
Frederick K. Ohlrich Clerk
Deputy

GEORGE
Chief Justice

Court of Appeal, Fourth Appellate District, Division One - No. D043134
S136036

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

DARROW DEWANN HAYGOOD, Defendant and Appellant.

Petition for review DENIED.

SUPREME COURT
FILED
SEP 28 2005
Frederick K. Ohlrich Clerk
DEPUTY

GEORGE
Chief Justice

RECEIVED
SEP 30 2005

Exhibit-A
for Exhausted Claim 4 and 6

Supreme Court No. ____________

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	Court of Appeal No. D043134
	)	Superior Court No. SCE229595
Plaintiff-Respondent,	)	
v.	)	
DARROW DEWANN HAYGOOD,	)	
Defendant-Appellant.	)	

APPEAL FROM THE SUPERIOR COURT
OF SAN DIEGO COUNTY
HONORABLE LOUIS R. HANOIAN, JUDGE

PETITION FOR REVIEW IN THE SUPREME COURT AFTER THE UNPUBLISHED DECISION OF THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE, AFFIRMING THE JUDGMENT OF CONVICTION

ROBERT E. BOYCE
State Bar No. 79806
BOYCE & SCHAEFER
934 23rd Street
San Diego, CA 92102-1914
(619) 232-3320

Attorneys for Defendant-Petitioner
DARROW DEWANN HAYGOOD

Table of Contents

Page

Table of Authorities iii

PETITION FOR REVIEW IN THE SUPREME COURT AFTER UNPUBLISHED DECISION OF THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE, AFFIRMING THE JUDGMENT OF CONVICTION 1

QUESTIONS PRESENTED 2

NECESSITY FOR REVIEW 3

STATEMENT OF THE CASE AND FACTS 4

ARGUMENT 5

I. REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER A GANG DETECTIVE SHOULD BE PERMITTED TO EXPRESS AN OPINION REGARDING WHETHER AN ACCUSED HAS COMMITTED A CRIME FOR THE BENEFIT OF A GANG 5

II. APPELLANT'S DUE PROCESS RIGHT UNDER THE FOURTEENTH AMENDMENT WAS VIOLATED BECAUSE THERE WAS INSUFFICIENT ADMISSIBLE EVIDENCE TO SUPPORT THE JURY'S TRUE FINDING ON THE GANG ENHANCEMENT 7

Claim → 9 III. REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER THE TRIAL COURT PREJUDICIALLY ERRED IN FAILING TO BIFURCATE THE GANG ENHANCEMENT FROM THE SUBSTANTIVE COUNTS 9

IV THE INTRODUCTION OF DETECTIVE MERCADO'S OPINION THAT PETITIONER WAS LYING AND JESSE SAVAGE AND OTHER WITNESSES WERE TELLING THE TRUTH VIOLATED PETITIONER'S RIGHT TO A FAIR TRIAL AND DUE PROCESS GUARANTEED BY THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION; ANY FAILURE TO PRESERVE THE ISSUE DEPRIVED PETITIONER OF EFFECTIVE ASSISTANCE OF COUNSEL 11

A. Procedural Background And Relevant Facts 11

B. Mercado's Opinion Was Inadmissible; Any Failure To Preserve The Issue Deprived Petitioner Of The Effective Assistance Of Counsel 13

Claim→6 V. REVIEW SHOULD BE GRANTED TO DETERMINE WHETHER THE BROTHER OF A ROBBERY VICTIM HAS JOINT AND CONSTRUCTIVE POSSESSION OF PROPERTY BY VIRTUE OF HIS FAMILY RELATIONSHIP TO THE VICTIM 15

VI. CONCLUSION 16

Certificate of Word Count

Proof of Service

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NOTICE OF DOCUMENT DISCREPANCIES

FILED
2008 JUN 11 AM 10:49
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY ______ DEPUTY

TO: ☑ U. S. DISTRICT JUDGE / ☐ U. S. MAGISTRATE JUDGE Houston
FROM: R. Mullin, Deputy Clerk RECEIVED DATE: 6/6/2008
CASE NO.: 08cv0374 JAH (BLM) DOCUMENT FILED BY: Petitioner
CASE TITLE: Haygood v. Knowles, et al
DOCUMENT ENTITLED: Objections to Report and Recommendation

Upon the submission of the attached document(s), the following discrepancies are noted:

✓	*Local Rule*	*Discrepancy*
☐	5.1	Missing time and date on motion and/or supporting documentation
☐	5.3	Document illegible or submitted on thermal facsimile paper
☐	**5.4**	**Document not filed electronically. Notice of Noncompliance already issued.**
☐	7.1 or 47.1	Date noticed for hearing not in compliance with rules/Document(s) are not timely
☐	7.1 or 47.1	Lacking memorandum of points and authorities in support as a separate document
☐	7.1 or 47.1	Briefs or memoranda exceed length restrictions
☐	7.1	Missing table of contents
☐	15.1	Amended pleading not complete in itself
☐	30.1	Depositions not accepted absent a court order
☐		Supplemental documents require court order
☐		Default Judgment in sum certain includes calculated interest
X		**OTHER: No original signature.**

Date forwarded: 6/9/2008

ORDER OF THE JUDGE / MAGISTRATE JUDGE

IT IS HEREBY ORDERED:

☐ The document is to be filed nunc pro tunc to date received.

☒ The document is NOT to be filed, but instead REJECTED. and it is ORDERED that the Clerk serve a copy of this order on all parties.

Rejected document to be returned to pro se or inmate? ☒ Yes. Court Copy retained by chambers ☐

* Petitioner may re-file his objections (with signature) on or before June 30, 2008

Counsel is advised that any further failure to comply with the Local Rules may lead to penalties pursuant to Local Rule 83.1

CHAMBERS OF: Houston

Dated: 6/9/08 By: C. Hill

cc: All Parties

K:\COMMON\FORMS\CIVCRM35.WPD
Form # Civ/Crim 35 (4/98) -- [Docuument Discrepancy / Court Order]